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09/649,484	08/28/2000	Eliot R. Long	10566/4	8431

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EXAMINER

SOTOMAYOR, JOHN

ART UNIT PAPER NUMBER

3714

DATE MAILED: 03/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/649,484

Applicant(s)

LONG, ELIOT R.

Examiner

John L Sotomayor

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☐ Responsive to communication(s) filed on \_\_\_\_.

2a) ☐ This action is FINAL.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-20 is/are rejected.

7) ☐ Claim(s) \_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 28 August 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some \* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.

4) ☐ Interview Summary (PTO-413) Paper No(s)

5) ☐ Notice of Informal Patent Application (PTO-892)

6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claims 7 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim states that successive equal values are compared in each of the class profiles, and successive equal values are not defined in the claim causing confusion about the claim and rendering it indefinite.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
  1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-6, and 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al (US 6,431,875 B1).

Art Unit: 3714

5. Regarding claims 1,2 and 11, Elliot et al discloses a testing method in which test results are evaluated on a question-by-question basis against a normal test result from students who are known to have not cheated to identify those students who vary from the norm (Col 18, lines 23-48). Elliot et al does not specifically disclose that a set of class profiles indicative of performance is provided, however, Elliot et al does disclose the creation and maintenance of individual profiles for all Test Candidates, including predictions on test performance among the plurality of factors included in the profile. Elliot et al also discloses using statistical methods for the analysis of test takers against the normal profile of test takers known not to have cheated for whole groups of individuals taking the test (Col 18, lines 15-23). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to provide profiles for individuals and groups indicative of performance on the test compared against a known test norm.

6. Regarding claims 3,4, and 6, Elliot et al discloses a plurality of statistical methods for analyzing test results against a norm to determine if a test taker has cheated, including reporting the number of decoy questions answered correctly while a low test result is achieved, and the time spent on each question, among others (Col 18, lines 15-35). Elliot et al does not specifically disclose the statistical methods of low correlation with the norm (claim 3) or the number of portions of the student profile that differ from the norm (claims 4 and 6). However, low correlation against a norm is a common and well-used statistical measure and all statistical measures are commonly used against an entire profile to provide a thorough analysis of results for test assessment. Therefore, it would have been obvious to one of ordinary skill in the art at

Art Unit: 3714

the time of invention to derive the statistical methods of low correlation with the norm, or the number of portions of the student profile that differ from the norm.

7. Regarding claim 5, Elliot et al discloses comparing the difference between an accumulated test taker profile and a norm profile on a question-by-question basis and provides a measure of expected variability of performance both on the test and for future endeavors (Col 18, lines 36-48).

8. Regarding claim 12, Elliot et al discloses a test deliverer that delivers the same test to a group of test takers to permit normalization of test scores with greater accuracy (Col 17, lines 7-12).

9. Regarding claims 13, 14 and 16, Elliot et al discloses a plurality of statistical methods for analyzing test results against a norm to determine if a test taker has cheated, including reporting the number of decoy questions answered correctly while a low test result is achieved, and the time spent on each question, among others (Col 18, lines 15-35). Elliot et al does not specifically disclose the statistical methods of low correlation with the norm (claim 13) or the number of portions of the student profile that differ from the norm (claims 14 and 16). However, low correlation against a norm is a common and well-used statistical measure and all statistical measures are commonly used against an entire profile to provide a thorough analysis of results for test assessment. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to derive the statistical methods of low correlation with the norm, or the number of portions of the student profile that differ from the norm.

10. Regarding claim 15, Elliot et al discloses comparing the difference between an accumulated test taker profile and a norm profile on a question-by-question basis and provides a

Art Unit: 3714

measure of expected variability of performance both on the test and for future endeavors (Col 18, lines 36-48).

11. Claims 7 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al (US 6,431,875 B1) in view of Brown et al (6,206,700 B1). Elliott et al does not disclose a method of determining equivalencies within class profiles. However, Brown et al teaches an education method in which normative responses comprise a variable range of acceptable

performance ratings in comparison to user responses (Col 16, lines 12-14). Therefore, it would have been obvious to one of ordinary skill in the art to identify equivalencies between the normative and class profiles, including successive equal values in the profiles. Combining the method disclosed by Elliot et al with the teaching of Brown et al provides administrators with a level of confidence in the data stored in the class profiles.

12. Claims 8 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al (US 6,431,875 B1) in view of Mishkin (US 6,377,781 B1).

13. Regarding claims 8 and 18, Elliot et al does not specifically disclose determining a class profile from individual profiles. However, Mishkin teaches that individual profiles may be accumulated into larger units as defined by sessions for entire classes and groups of classes, including any sub-grouping desired based upon the number of sessions, taking the same quiz (Col 4, lines 50-60). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to provide a method for accumulating a class profile from all of the individual profiles in a given class. Combining the disclosure of Elliot et al with the teaching of Mishkin provides a means of extending statistical analysis for cheating behavior across an entire grouping of individuals who take a common test.

Art Unit: 3714

14. Claims 9,10,19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al (US 6,431,875 B1) in view of Siefert (6,386,883 B2).

15. Regarding claims 9 and 19, Elliot et al does not specifically disclose that the profiles for a class (claim 9) or a sub-group (claim 19) are indicative of expected performance for a particular skill level. However, Siefert teaches a computer assisted education method in which skills

~~required for a student's advancement are basic data required in student profiles (Col 8, lines 55-~~

65). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to view a class or sub-group profile for an indication of expected performance characterized by skill level. Combining the method disclosed by Elliot et al with the teaching of Siefert provides an assessment for educators for the expected advancement of a class given the current skill level of the profiles within the class.

16. Regarding claims 10 and 20, Elliot et al does not specifically disclose that the profiles for a class (claim 9) or a sub-group (claim 19) are indicative of expected performance for a wide-range of skill levels. However, Siefert teaches a computer assisted education method in which the plurality of skills required for a student's advancement are basic data required in student profiles (Col 8, lines 55-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to view a class or sub-group profile for an indication of expected performance characterized by a plurality of skill levels. Combining the method disclosed by Elliot et al with the teaching of Siefert provides an assessment for educators for the expected advancement of a class given the current plurality of skill levels of the profiles within the class.

Art Unit: 3714

**Conclusion**

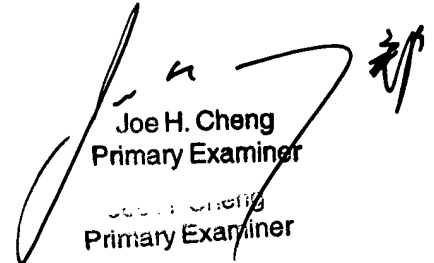
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John L Sotomayor whose telephone number is 703-305-4558.

The examiner can normally be reached on 6:30-4:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7768 for regular communications and 703-308-7768 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4558.

jls  
March 4, 2003

  
Joe H. Cheng  
Primary Examiner  
Joe H. Cheng  
Primary Examiner